

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO
VILLATORO, MISAIEL ALEXANDER MARTINEZ
CASTRO, ANGEL MARTINEZ, EDWIN ULLOA
MOREIRA and MATEO UMAÑA individually and on
behalf of all others similarly situated,

Plaintiffs,

-against-

KELCO CONSTRUCTION, INC., KELCO
LANDSCAPING, INC., E.L.M. GENERAL
CONSTRUCTION CORP. D/B/A KELLY'S CREW,
JOHN KELLY and JOSEPH PROVENZANO,

Defendants.

Case No. 1:21-CV-09014
(PAE)(SDA)

**DECLARATION OF ELMER CRUZ IN SUPPORT OF
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION PURSUANT TO 29 U.S.C. § 216(b)**

I, Elmer Cruz, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration in support of Defendants' Opposition to Plaintiffs' Motion for Conditional Certification pursuant to 29 U.S.C. § 216(b). I am personally familiar with the facts set forth below and submit this declaration based on my personal knowledge.
2. I am a resident of Hempstead, New York, in Long Island.
3. I currently work for Kelco Construction as a laborer. I have been working for Kelco Construction since approximately 1999.
4. My duties as a laborer include, but are not limited to, landscaping and planting.
5. I have been a union member of Local 731 since 2008.
6. I arrived at a park-and-ride in Commack, New York each morning at around 4:45 a.m. to be picked up by an employee driving the company vehicle.

7. I normally do not go to 25 Newton Place, Hauppauge, New York ("Hauppauge facility") unless I had to perform some work for ELM at the Hauppauge facility on rare occasions.

8. I did not perform any work at the Hauppauge facility prior to the workday at the jobsite. Nor did I perform any work at the Hauppauge facility at the end of the workday.

9. I was picked up along with approximately three (3) or four (4) coworkers from the park-and-ride each workday, depending on the jobsite we were going to that day.

10. I voluntarily get a ride into work because it is easier for me to get to jobsites by commuting on a company vehicle with other coworkers. Kelco Construction did not require me to get to work on the company vehicle.

11. Depending on the traffic, it takes about one and one-half (1 ½) hours to travel from the park-and-ride to the jobsites in New York City.

12. On average, I start working at the jobsite at around 7:00 a.m.

13. It takes approximately two (2) or two and one-half hours (2 ½) to travel back to the park-and-ride location from the jobsite, depending on traffic.

14. In some emergency situations, I did not get a ride from the park-and-ride into the jobsite in New York City.

15. I regularly work for Kelco Construction five (5) days per week, eight (8) hours per day.

16. At times, to meet deadlines, I work over forty (40) hours in a week. However, this did not happen frequently. When I work over forty (40) hours in a week, I am paid for those hours at an overtime rate.

17. I am paid hourly at a union rate of approximately \$42.00 from Kelco Construction.

18. I am paid hourly at a rate of approximately \$18.00 from ELM for work that I


perform at the Hauppauge facility on rare Saturdays.

19. My primary language is Spanish. On January 25, 2023, Luis Lopez, CCI verbally translated this declaration to me in Spanish. I fully understand the contents of this declaration in my primary language.

20. This declaration was prepared by counsel for Defendants in the action based on an interview in which I voluntarily participated. I was advised that I could end the interview at any time. I have also been told by counsel for the Defendants that I should sign this declaration if I want to and if everything within it is true and correct to the best of my knowledge, information, and belief. I have been given a full opportunity to review this declaration carefully and freely and make any corrections and additions of any kind.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: January 25, 2023



Elmer Cruz